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REMARKS

Claims 1, 5, 6, 19, 22 and 23 are amended herein. Upon entry of this amendment, claims 1-30 will be pending in the above-identified application.

Applicant acknowledges the allowability of claims 3-7, 15, 16 and 18-30.

Applicant requests reconsideration and allowance of the claims in view of the following remarks.

Section 102 - Hepburn

Claims 1, 9, 11, 12 and 17 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,014,690 (Hepburn). Each of the claims recites apparatus comprising: a leg member having a first support adapted for engaging the patent's leg adjacent at least one of a lateral malleolus and a medial malleolus of the patient, and a second support opposing the first support adapted for engaging the patent's leg adjacent another of the lateral malleolus and the medial malleolus of the patient; and a foot member rotatably connected to the leg member, the foot member having a metatarsal support adapted for engaging the patent's foot adjacent a predetermined point on at least one preselected metatarsal bone of the patient.

Contrary to the assertion made in the Office Action, Hepburn does not disclose or suggest a leg member having a first support adapted for engaging the patent's leg adjacent at least one of a lateral malleolus and a medial malleolus of the patient, and a second support opposing the first support adapted for engaging the patent's leg adjacent another of the lateral malleolus and the medial malleolus of the patient as claimed. Rather, Hepburn discloses a device having struts 3, 5 joined at socket head portions 9 positioned on opposite sides of the ankle of a patient. The reference does not disclose or suggest that the struts or head portions actually engage either the ankle of the patient. As a result, the Hepburn reference could not be used to determine dorsiflexion angle of a surgical patient's foot relative to the corresponding leg during tendon surgery as claimed.

Because the cited reference fails to disclose or suggest each feature recited in the claims, the Section 102 rejection is improper and should be withdrawn.

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Section 103 - Hepburn and Kaiser

Claims 2 and 10 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,014,690 (Hepburn) in view of U.S. Patent No. 5,297,540 (Kaiser). Both of these claims depend from claim 1 which as discussed above recites apparatus comprising: a leg member having a first support adapted for engaging the patent's leg adjacent at least one of a lateral malleolus and a medial malleolus of the patient, and a second support opposing the first support adapted for engaging the patent's leg adjacent another of the lateral malleolus and the medial malleolus of the patient; and a foot member rotatably connected to the leg member, the foot member having a metatarsal support adapted for engaging the patent's foot adjacent a predetermined point on at least one preselected metatarsal bone of the patient.

As discussed above, Hepburn fails to disclose or suggest apparatus comprising a leg member having a first support adapted for engaging the patent's leg adjacent at least one of a lateral malleolus and a medial malleolus of the patient, and a second support opposing the first support adapted for engaging the patent's leg adjacent another of the lateral malleolus and the medial malleolus of the patient. Kaiser also fails to disclose or suggest these features. Likewise, the combined references fail to disclose or suggest these features and therefore the Section 103 rejection is improper. Therefore, applicant requests the rejection be withdrawn.

Section 103 - Hepburn and Cronk or Horne

Claim 8 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Hepburn in view of U.S. Patent No. 4,572,170 (Cronk) or U.S. Patent No. 3,779,654 (Horne). Claim 8 recites apparatus comprising: a leg member having a first support adapted for engaging the patent's leg adjacent at least one of a lateral malleolus and a medial malleolus of the patient, and a second support opposing the first support adapted for engaging the patent's leg adjacent another of the lateral malleolus and the medial malleolus of the patient; and a foot member rotatably connected to the leg member, the foot member having a metatarsal support adapted for engaging the

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patent's foot adjacent a predetermined point on at least one preselected metatarsal bone of the patient.

As discussed with respect to claim 1, Hepburn fails to disclose or suggest apparatus comprising a leg member having a first support adapted for engaging the patent's leg adjacent at least one of a lateral malleolus and a medial malleolus of the patient, and a second support opposing the first support adapted for engaging the patent's leg adjacent another of the lateral malleolus and the medial malleolus of the patient. Cronk and Home also fail to disclose or suggest these features. As a result, the combined references fail to disclose or suggest these features and therefore the Section 103 rejection is improper. Accordingly, applicant requests the rejection be withdrawn.

Section 103 - Hepburn and Sherman

Claims 13 and 14 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Hepburn in view of U.S. Patent No. 2,428,342 (Sherman). Claims 13 and 14 recite apparatus comprising: a leg member having a first support adapted for engaging the patent's leg adjacent at least one of a lateral malleolus and a medial malleolus of the patient, and a second support opposing the first support adapted for engaging the patent's leg adjacent another of the lateral malleolus and the medial malleolus of the patient; and a foot member rotatably connected to the leg member, the foot member having a metatarsal support adapted for engaging the patent's foot adjacent a predetermined point on at least one preselected metatarsal bone of the patient.

As discussed with respect to claim 1, Hepburn fails to disclose or suggest apparatus comprising a leg member having a first support adapted for engaging the patent's leg adjacent at least one of a lateral malleolus and a medial malleolus of the patient, and a second support opposing the first support adapted for engaging the patent's leg adjacent another of the lateral malleolus and the medial malleolus of the patient. Sherman also fails to disclose or suggest these features. Likewise, the combined references fail to disclose or suggest these features, and therefore, the

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Section 103 rejection is improper. Therefore, applicant requests the rejection be withdrawn.

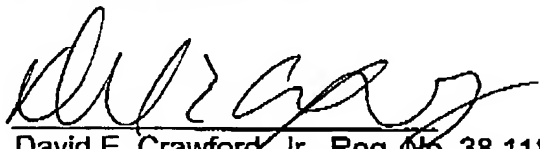
Conclusion

If the Examiner believes that there is any issue which could be resolved by an interview, the Examiner is respectfully requested to contact the undersigned attorney at the telephone number listed below.

As it is believed that application is in condition for allowance, a favorable action and Notice of Allowance are respectfully requested.

Dated: 02 MAR 05

Respectfully submitted,



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